

SENATE MOTION

MR. PRESIDENT:

I move that Engrossed House Bill 1368 be amended to read as follows:

- 1 Page 6, after line 32, begin a new paragraph and insert:
- 2 "SECTION 8. [EFFECTIVE UPON PASSAGE] (a)
- 3 Notwithstanding IC 29-1-5-3, IC 29-1-5-6, and IC 29-1-5-9, this
- 4 SECTION applies to a will executed before, on, or after July 1,
- 5 2003. A will, other than a nuncupative will must be executed by the
- 6 signature of the testator and of at least two (2) witnesses on:
- 7 (1) a will under subsection (b);
- 8 (2) a self-proving clause under SECTION 9(c) of this act; or
- 9 (3) a self-proving clause under SECTION 9(d) of this act.
- 10 (b) A will may be attested as follows:
- 11 (1) The testator, in the presence of two (2) or more attesting
- 12 witnesses, shall signify to the witnesses that the instrument is
- 13 the testator's will and either:
- 14 (A) sign the will;
- 15 (B) acknowledge the testator's signature already made; or
- 16 (C) at the testator's direction and in the testator's presence
- 17 have someone else sign the testator's name.
- 18 (2) The attesting witnesses must sign in the presence of the
- 19 testator and each other.
- 20 An attestation or self-proving clause is not required under this
- 21 subsection for a valid will.
- 22 (c) A will that is executed substantially in compliance with
- 23 subsection (b) will not be rendered invalid by the existence of:
- 24 (1) an attestation or self-proving clause or other language; or
- 25 (2) additional signatures;
- 26 not required by subsection (b).
- 27 (d) A will executed in accordance with subsection (b) is
- 28 self-proved if the witness signatures follow an attestation or
- 29 self-proving clause or other declaration indicating in substance the
- 30 facts set forth in SECTION 9(c) or 9(d) of this act.
- 31 (e) This SECTION shall be construed in favor of effectuating

the testator's intent to make a valid will.

(f) This SECTION expires July 1, 2003.

SECTION 9. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 29-1-5-3, IC 29-1-5-6, and IC 29-1-5-9, this SECTION applies to a will executed before, on, or after July 1, 2003. When a will is executed, the will may be:

(1) attested; and

(2) made self-proving;

by incorporating into or attaching to the will a self-proving clause that meets the requirements of subsection (c) or (d). If the testator and witnesses sign a self-proving clause that meets the requirements of subsection (c) or (d) at the time the will is executed, no other signatures of the testator and witnesses are required for the will to be validly executed and self-proved.

(b) If a will is executed by the signatures of the testator and witnesses on an attestation clause under SECTION 8(b) of this act, the will may be made self-proving at a later date by attaching to the will a self-proving clause signed by the testator and witnesses that meets the requirements of subsection (c) or (d).

(c) A self-proving clause must contain the acknowledgment of the will by the testator and the statements of the witnesses, each made under the laws of Indiana and evidenced by the signatures of the testator and witnesses (which may be made under the penalties for perjury) attached or annexed to the will in form and content substantially as follows:

We, the undersigned testator and the undersigned witnesses, respectively, whose names are signed to the attached or foregoing instrument declare:

(1) that the testator executed the instrument as the testator's will;

(2) that, in the presence of both witnesses, the testator signed or acknowledged the signature already made or directed another to sign for the testator in the testator's presence;

(3) that the testator executed the will as a free and voluntary act for the purposes expressed in it;

(4) that each of the witnesses, in the presence of the testator and of each other, signed the will as a witness;

(5) that the testator was of sound mind when the will was executed; and

(6) that to the best knowledge of each of the witnesses the testator was, at the time the will was executed, at least eighteen (18) years of age or was a member of the armed forces or of the merchant marine of the United States or its allies.

Testator

Date

Witness

Witness

(d) A will is attested and self-proved if the will includes or has attached a clause signed by the testator and the witnesses that indicates in substance that:

(1) the testator signified that the instrument is the testator's will;

(2) in the presence of at least two (2) witnesses, the testator signed the instrument or acknowledged the testator's signature already made or directed another to sign for the testator in the testator's presence;

(3) the testator executed the instrument freely and voluntarily for the purposes expressed in it;

(4) each of the witnesses, in the testator's presence and in the presence of all other witnesses, is executing the instrument as a witness;

(5) the testator was of sound mind when the will was executed; and

(6) the testator is, to the best of the knowledge of each of the witnesses, either:

(A) at least eighteen (18) years of age; or

(B) a member of the armed forces or the merchant marine of the United States or its allies.

(e) This SECTION shall be construed in favor of effectuating the testator's intent to make a valid will.

(f) This SECTION expires July 1, 2003.

SECTION 10. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 29-1-5-6, no will in writing, nor any part thereof, except as in this article provided, shall be revoked, unless the testator, or some other person in his presence and by his direction, with intent to revoke, shall destroy or mutilate the same; or such testator shall execute other writing for that purpose, signed, subscribed and attested as required in SECTION 8 or 9 of this act. A will can be revoked in part only by the execution of a writing as herein provided. And if, after the making of any will, the testator shall execute a second, a revocation of the second shall not revive the first will, unless it shall appear by the terms of such revocation to have been his intent to revive it, or, unless, after such revocation, he shall duly republish the previous will.

(b) This SECTION expires July 1, 2003.

SECTION 11. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 29-1-5-9, an instrument creating an inter vivos trust in order to be valid need not be executed as a testamentary instrument pursuant to SECTION 8 or 9 of this act, even though such trust instrument reserves to the maker or settlor the power to revoke, or the power to alter or amend, or the power to control investments, or the power to consume the principal, or because it reserves to the maker or settlor any one or more of said powers.

- 1 **(b) This SECTION expires July 1, 2003.**
- 2 **SECTION 12. An emergency is declared for this act."**
- 3 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1368 as printed March 21, 2003.)

Senator LANANE